

The Administrative Law Judge denied benefits finding claimant had not met her burden of proving that she sustained personal injury by accident on August 12, 1992, arising out of and in the course of her employment. The Administrative Law Judge further found claimant had not given notice as required by K.S.A. 44-520 (Ensley) and that the respondent had been prejudiced thereby. Claimant appeals raising the following issues:

- (1) Did claimant meet with personal injury by accident on August 12, 1992?
- (2) Did claimant's alleged accidental injury arise out of and in the course of her employment with the respondent?
- (3) Did the respondent receive timely notice of the claimed accident and, if not, was respondent prejudiced thereby?
- (4) What was claimant's average weekly wage on the date of accident?
- (5) What is the nature and extent of claimant's disability?
- (6) Is claimant entitled to additional medical benefits for bills incurred?
- (7) Is claimant entitled to future medical benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs and arguments of the parties, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed. The claimant's testimony, treatment records, and the testimonies of claimant's supervisors and employers convince the Appeals Board that the injury alleged to have occurred on August 12, 1992 was not proved by a preponderance of the credible evidence.

The findings of fact and conclusions of law as enumerated in the Award by the Administrative Law Judge are found to be accurate and appropriate as to issues numbered (1) and (2). Those findings and conclusions are hereby adopted by the Appeals Board as its own as if specifically set forth herein. The Appeals Board agrees that claimant has not sustained her burden of proof that her injury resulted from an accident at work on August 12, 1992. The Appeals Board further finds that said accident did not arise out of and in the course of her employment with respondent.

The Appeals Board further adopts the analysis of the evidence by the Administrative Law Judge concerning the equivocal nature of claimant's testimony on the notice issue. Those inconsistencies, together with the contradictory testimony given by the various witnesses on the notice issue, adversely impact the credibility of the claimant's testimony in general. While we do not necessarily agree with the conclusion by the Administrative Law Judge concerning prejudice, we need not reach that issue given our findings on the questions of accident arising out of and in the course of employment. The remaining issues raised on claimant's appeal become moot.

Claimant does raise considerable doubt concerning the significance of respondent's failure to locate any record of claimant having been to the landfill, the site where claimant's accident is alleged to have occurred, on August 12, 1992. However, claimant failed to go the next step to show either that there was, in fact, a record of the trip to the landfill which had been overlooked or that the records were so deficient that no conclusion could be drawn therefrom. Similarly, there is the question surrounding the identity and absence of testimony from the coworker who was allegedly with the claimant at the time of her accident. Although claimant cannot specifically recall who that person was, the most likely candidate seems to be that it was Paul Richardson, Jr., the son of Paul Richardson, the director of the Salina/Saline County Health Department. The respondent produced records that it argued showed that Paul Richardson, Jr., did not work on August 12, 1992. Claimant counters that just because Paul Richardson, Jr. was not scheduled to work on August 12, 1992 does not mean that he in fact did not work. Claimant points out that respondent did not produce the payroll records which would have answered that question. By the same token, claimant did not obtain those payroll records nor did they produce Paul Richardson, Jr., as a witness in this case.

Claimant bears the burden of proof to establish her right to an award of compensation and to prove "the various conditions on which the claimant's right depends." K.S.A. 1992 Supp. 44-501(a). The trier of facts must consider the entire record to determine whether claimant has satisfied her burden of proof. The Workers Compensation Act defines the term "burden of proof" in such a manner as to provide a standard for weighing the evidence upon which issues are to be determined. K.S.A. 1992 Supp. 44-508(g) provides:

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true" See also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993).

In order to be compensable, an injury must arise out of and in the course of employment. K.S.A. 1992 Supp. 44-501(a). The two phrases arising "out of" and "in the course of" employment have separate distinct meanings and they are conjunctive, and each condition must exist before compensation is allowable. Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995).

The phrase "out of" employment points to the cause or origin of the worker's accident and requires some causal connection between the accidental injury and the employment. An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises out of employment if it arises out of the nature, conditions, obligations and incidents of the employment. Angleton v. Starkan, Inc., 250 Kan. 711, 828 P.2d 933 (1992).

The greater weight of the evidence demonstrates claimant did not sustain an injury while she was at work on August 12, 1992. Claimant has not given any alternative to this single alleged accident date nor has she satisfactorily explained the inconsistencies and

evidence weighing against her accident having occurred on that date and in the manner alleged. Accordingly, the Appeals Board finds that claimant's burden of proof has not been satisfied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated February 19, 1996, should be, and hereby is, affirmed, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Wm. Rex Lorson, Salina, KS
 Donald G. Reinsch, Salina, KS
 Bruce E. Moore, Administrative Law Judge
 Philip S. Harness, Director